

Lal (Migration) [2020] AATA 4762 (28 August 2020)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Harkesh Lal
CASE NUMBER:	1928363
HOME AFFAIRS REFERENCE(S):	BCC2014/957379
MEMBER:	Adrienne Millbank
DATE:	28 August 2020
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 28 August 2020 at 4:37pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – Federal Circuit Court remittal – genuine relationship – close relationship of the applicant and the sponsor’s son – delayed registration of the marriage – entering a contrived relationship to obtain permanent residency – family recognition and support of the relationship – no joint ownership of significant assets – sponsor’s reliance on Centrelink benefits – decision under review affirmed

LEGISLATION

Migration Act 1958, ss 5, 65, 359, 360, 363
Migration Regulations 1994, Schedule 2, cls 820.211, 820.221; r 1.15

CASES

He v MIBP [2017] FCAFC 206
Waensila v MIBP [2016] FCAFC 32

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Border Protection on 18 April 2017 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant was born in India in 1975 and is 45 years old at the time of decision. He first arrived in Australia on 20 April 2010, on a Student (Subclass 572) visa as the dependent spouse of his first wife. That visa, the applicant's last substantive visa, expired on 25 September 2012. On 28 June 2012 the applicant applied for a Regional Sponsored (Subclass 875) visa, also as the dependent spouse of his first wife. The nomination was refused, and the application was withdrawn on 28 March 2013. The applicant remained in Australia and was an unlawful non-citizen from 25 April 2013 to 16 May 2013.
3. On 16 May 2013 the applicant approached the Department and advised that he wished to lodge a further visa application. On 23 May 2013 he lodged an application for a Temporary Skilled (Subclass 457) visa, on the basis that he had been employed for the previous three and a half years on a farm in Woolgoolga, NSW. That application was refused on 22 November 2013 on the grounds that the applicant did not satisfy the Schedule 3 criteria, as he was not the holder of a substantive visa at the time of application. On 12 December 2013 the applicant applied for review of that decision with the then Migration Review Tribunal (MRT). On 11 April 2014 he withdrew that review application.
4. The sponsor was born in Sri Lanka in 1975. She first arrived in Australia when she was eight years of age, as the adopted daughter of an Australian couple. She has a son who was 10 years old at the time of decision, from a previous relationship. The applicant claimed in his application form that he first met the sponsor on 21 May 2012 when they were introduced by his cousin at a birthday party, and that they entered into a committed relationship in February 2014. They married in Australia in March 2014.
5. The applicant applied for the visa on 9 April 2014 on the basis of his relationship with the sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
6. On 25 September 2014 the application was refused on the grounds that the applicant did not meet the Schedule 3 criteria. On 10 October 2014 the applicant lodged a review of that decision with the MRT, and on 2 June 2015 the MRT affirmed the decision. The applicant appealed to the Federal Circuit Court, and the application was remitted by consent as a result of the decision in *Waensila v MIBP* [2016] FCAFC 32, that circumstances which constitute 'compelling reasons' for not applying the Schedule 3 criteria can arise at any time, including after the visa application is made.
7. On 23 September 2016 the application was remitted by the (differently constituted) Tribunal with the direction that the applicant met the Schedule 3 criteria. That Tribunal found that the sponsor's son had bonded with the applicant, and that this was a compelling and compassionate circumstance that warranted waiving the Schedule 3 criteria.

8. A delegate then refused to grant the visa, in the decision subject to this review, on the basis that the applicant did not satisfy cl.820.211(2). The delegate was not satisfied that the applicant was in a genuine relationship with the sponsor.
9. The delegate noted in the decision record that the applicant's visa history demonstrated 'a willingness to make all possible attempts and use all possible pathways to remain in Australia'. Regarding the applicant's claim to be in a genuine relationship with the sponsor, the delegate noted: a lack of any evidence of the development of the relationship; information before the Department indicating that the applicant and the sponsor did not reside together as a couple; a lack of evidence that they had pooled their resources as a couple; and allegations received by the Department that the applicant had entered into a contrived relationship to obtain permanent residency. The delegate found the applicant had not, when invited, credibly explained the adverse information that was put to him, including that he had presented himself on his Facebook page (in 2016) as single and not living with the sponsor.
10. The delegate also noted in the decision record that on 27 January 2017 the Department requested the applicant to provide his registered marriage certificate, to substantiate his claim that he married the sponsor on 7 March 2014. The applicant provided a certificate showing the marriage was registered on 21 March 2017, three years after the wedding ceremony. The delegate doubted whether the marriage would ever have been legally registered, if the Department had not requested the certificate.
11. The applicant applied for review, and the (differently constituted) Tribunal affirmed the decision on 29 October 2018. The applicant applied for review of that Tribunal's decision, and on 29 September 2019 Judge Egan in the Federal Circuit Court remitted the application to the Tribunal for reconsideration. Judge Egan found jurisdictional error for the reason that 'illogicality and unreasonableness' had affected the Tribunal's decision in respect of its 'critical findings of implausibility, inconsistency and lack of credibility on the part of the applicant'. Specifically, he found it 'unreasonable and illogical' that the Tribunal had expected the applicant to be able to recall details of his wedding four years earlier, and 'wrong and illogical' for the Tribunal to have found a lengthy delay in the registration of the marriage 'evidenced lack of genuine relationship'.
12. On 20 July 2020 the Tribunal invited the applicant to an in-person hearing scheduled for 10 August 2020, during the COVID-19 pandemic. On 29 July 2020 the representative emailed a request for postponement of the hearing 'until the borders between NSW and Queensland are reopened'. The representative submitted that the applicant was in Grafton, she was in Sydney and that in the interests of health and safety it was better to avoid interstate travel.
13. The Tribunal then exercised its discretion to hold the hearing by video conference, using Microsoft Teams. The Tribunal had regard to the fact that it is normal practice for applicants located as far from the Tribunal in Brisbane as Grafton, to appear by video conference. The Tribunal had regard also to its objective of providing a mechanism of review that is fair, just, economical and quick, and the delay to the matter if the hearing was not to be conducted by video conference. The representative raised concerns that the applicant had no computer and that the sponsor's parents, from whose house he would have to appear, would be away until 9 August 2020 and therefore unable to accommodate a test video call prior to the hearing. The representative further expressed concerns that the applicant 'would face discomfort with a remote interpreter, potentially causing misunderstandings and confusion', and, this being the fourth Tribunal hearing after two visa refusals and two Federal Circuit Court hearings, that conducting the hearing by video conference would 'severely disadvantage' the applicant.

14. The Tribunal considered these concerns and is satisfied that the applicant had a fair hearing. The Tribunal had regard to the nature of the matter and the individual circumstances of the applicant and determined that it was reasonable to hold a hearing by video conference. The Tribunal postponed the hearing for two days to enable pre-hearing video testing. The Tribunal notes the review applicant, because he was located in Grafton, would have been invited to appear by video conference regardless of the pandemic. The applicant confirmed during the hearing that he had no difficulty understanding the interpreter. While the second interpreter's line dropped out at the end of the hearing, the applicant, who has lived and worked in Australia for over ten years, appeared to be able to understand, and respond, in English, to the final questions and issues that were raised after the line dropped out. The applicant agreed, through his representative, that he would make any further responses or clarifications to these final questions and issues, or to any questions or issues raised during the hearing, after the hearing. The Tribunal granted an extension of time, seven days, for this purpose, and considered the further submission written by the representative, received by the Tribunal on 20 August 2020.
15. The applicant appeared before the Tribunal on 12 August 2020, by Microsoft Teams video, from the sponsor's adoptive parents' house in Grafton, NSW, to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor and the sponsor's adoptive parents.
16. The hearing was conducted, as noted, with the assistance of two Punjabi language interpreters.
17. The applicant was represented in relation to the review by his registered migration agent, who attended the hearing.
18. The Tribunal advised the applicant at the outset of the hearing that it had the Department and Tribunal files from all his previous visa and review applications and would be drawing on the information in these files as well as his testimony at hearing, in making a decision. The Tribunal reminded the applicant of the existence of certificates, a s.375A and a s.376 certificate, protecting certain documents on a Departmental file from being released to him. The Tribunal reminded the applicant that the documents detailed allegations made to the Department by more than one informant; and that the gist of the allegations was that he had contrived to marry the sponsor for the purpose of obtaining a visa, and the relationship was not genuine.
19. The Tribunal advised the applicant that it considered the certificates valid and copies could be emailed to him, through his representative, if he wished to comment on their validity. The applicant indicated that he was familiar with the certificates and the information that they covered, the gist of which was put to him under s.359AA by the previous Tribunal, and had no comment to make regarding their validity. The Tribunal acknowledged that the applicant had previously responded to, and denied, the allegations covered by the certificates, including during his previous review. The Tribunal advised the applicant that it nevertheless had concerns regarding the allegations because the informants were not anonymous; the allegations were detailed; the informants appeared well-informed about his immigration history and circumstances; and the Tribunal was not satisfied that his previous responses adequately addressed the concerns raised by the allegations.
20. The Tribunal advised the applicant that he could seek an adjournment and consult with his representative at any time during the hearing. The applicant did not seek an adjournment, however there were several adjournments during the hearing because of technical difficulties, and because another interpreter had to be obtained when the hearing went over the allocated time.

21. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

22. The issue in the present case is whether the applicant was in a genuine relationship with the sponsor at the time of application, 9 April 2014, and continues to be in a genuine relationship with the sponsor at the time of this decision.

Whether the parties are in a spouse or de facto relationship

23. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor, who was granted Australian citizenship in 2014. A copy of a New South Wales Marriage Certificate was provided, registered by the Registry of Births, Deaths and Marriages, Sydney, on 22 March 2017, certifying that the parties married in Grafton, NSW, on 21 March 2014. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Background – development of the relationship

24. The Tribunal acknowledged at the outset of the hearing that the parties claimed to have been in a married relationship for six and a half years, which is a considerable time. The Tribunal advised the applicant that it had to be satisfied, however, that he was in a genuine spousal relationship with the sponsor, as defined in the Act (as set out in paragraph 38 below), at the time he lodged the application for the visa, as well as at the time of the Tribunal's decision. The Tribunal reminded the applicant that insufficient evidence of the relationship had been provided to satisfy the delegate and advised the applicant that it had to be satisfied that the further evidence before it at the time of decision illuminated the nature of his relationship with the sponsor, such as to show it was genuine at the time of application.
25. The Tribunal advised the applicant that it held concerns about the development of the relationship, arising from: his immigration history; the circumstances of the sponsor; the evidence provided by witnesses and third parties; the dob-in allegations made to the Department in 2014 and 2016; his Facebook presentation of himself in 2016 as single; and contradictions in the claims made to the Tribunal by the parties and witnesses about how the relationship developed.
26. The Tribunal asked the applicant whether he informed the Department about his changed circumstances when he separated from his first wife, as he had entered the country as a dependent on her Student visa. The Tribunal also asked the applicant why he entered into a relationship and married an Australian citizen at a time when his temporary visa had expired, his applications for work visas had been refused and he did not hold a substantive visa to be in the country. The applicant stated that his agent at the time did not tell him he was illegal and that he applied for his own visa when he found out.
27. The Tribunal asked the applicant whether the sponsor was introduced to him by his cousin as a potential marriage partner. The applicant responded that she was. He stated that he liked the sponsor, she liked him, and she agreed, when the proposition was put to her, to marry him. He stated that there was no engagement; they just had a 'court marriage'. He said he told his parents in India about the marriage, but the sponsor did not tell her adoptive parents or other family members because 'she was scared'.

28. The sponsor's adoptive father confirmed at hearing that the sponsor is 'vulnerable' and 'has difficulty understanding things'. He advised that she is 'well-intentioned'. He explained that the sponsor lives with intellectual impairment from brain damage caused by severe malnutrition in her early years. He advised that he and his wife adopted the sponsor and other children from an orphanage in Sri Lanka when they were seven or eight years old, by which age they had already absorbed 'cultural attitudes'. He advised that the sponsor had been in an abusive relationship with the father of her son; that she seemed happier in her relationship with the applicant; and that for this reason he supported the visa application. He advised also that he has been a clergyman and former librarian at national institutions in Canberra, and that he has assisted other people, besides the applicant, to obtain visas to enter and stay in Australia.
29. The sponsor's father described how Grafton is a transport hub where truck drivers stop over during inter-city hauls. He advised that the routine of the applicant, a truck driver who is based in Melbourne, has been to stop in Grafton on a Friday or Saturday night before heading to Brisbane, and that he would sometimes also stop in Grafton on a Monday on his way back to Melbourne. He said he had seen the applicant at his adopted daughter's house on some Sundays in 2012 and 2013. The sponsor's mother said she and her husband thought they were just friends.
30. The sponsor's adoptive father further advised that he and his wife retired to Grafton in 2010; that they own the house their adopted daughter lives in; and that they have set aside the rent money she pays them, AUD 240 a week recently risen to AUD280 a week, for a deposit so she can purchase the house in the future. The sponsor's adoptive mother stated that she suffers from Parkinson's disease and needs her adopted daughter to live near her and help her, because her husband is busy.
31. The applicant declared in his application form that he was introduced to the sponsor in early 2012. Photos were provided titled 'First meeting 21 May 2012', of the parties together at the sponsor's cousin's birthday party. The Tribunal put to the applicant that he lodged an application on 28 June 2012 for a Regional Sponsored (Subclass 875) visa as the dependent spouse of his first wife, and did not withdraw that application until 28 March 2013, after the nomination was refused, despite having been separated from his first wife for at least six months. (The applicant provided a copy of his Federal Circuit Court divorce order, dated 5 September 2013. Under Australian marriage law he would have had to have been separated from his first wife for 12 months, that is, from 5 September 2012.) The Tribunal advised that it was confused, on the information before it, as to when his relationship with his first wife ended and his relationship with the sponsor began, however, it appeared that he had claimed to be in relationships with them at times to suit his visa applications.
32. The Tribunal put to the applicant that he appeared to have used marriage as a means of entering and staying in Australia, and this led credence to the dob-in of 2014 where a person described how he offered her AUD30,000 to marry him for visa purposes. The applicant responded that the allegation was not true; that he didn't have that sort of money; that he and the sponsor were introduced and liked each other but didn't enter into a relationship until after he separated from his first wife. He stated that the Federal Circuit Court agreed to allow their divorce after a shortened period of separation because it was not contested, but provided no evidence in support of this dispensation. He stated that he entered into a committed relationship with the sponsor only in February 2014. He confirmed that this was one month before their marriage and two months before the visa application.
33. The Tribunal put to the applicant that there were inconsistencies in the evidence provided to the Tribunal regarding the development of his relationship with the sponsor. In a statutory declaration signed on 30 July 2020, his cousin declared that after the parties were introduced at his party, 'they dated for a while and got engaged, after a while decided to

marry'. The sponsor provided a written statement dated 29 July 2020, in which she stated '[the applicant] and I met at his cousin Paul place in 2012, we started dating shortly after ... he is good looking and was very kind to me'. At hearing the sponsor confirmed she meant romantic dating from the time of their introduction in 2012. She described how the applicant took her to lunch and dinner, how the relationship blossomed and deepened over time, how the applicant proposed marriage with a diamond ring and how they had an engagement party, although she could not remember when this was held. The applicant was unable to explain the sponsor's and his cousin's claims regarding dating in 2012 and 2013 and getting engaged. He stated that he 'only had a court marriage'; that he was 'only friends' with the sponsor in 2012 and 2013; and that he gave the sponsor a computer for a wedding present.

34. The sponsor's parents confirmed at hearing that despite living in Grafton since 2010 and dropping in on the sponsor at least weekly, on their way home from church, they knew nothing about an engagement, a diamond ring, or a marriage. The Tribunal asked them why they thought they weren't invited to the wedding or told beforehand, as they appeared to be close to and supportive of their adopted daughter. They responded they couldn't answer the question; that it was inexplicable. They posited that the sponsor might have been wary of telling them, as Christians, she had married a Hindu, but that this didn't make sense, given their adopted children were not religiously observant, one of them had married someone of Islamic faith from Turkey and they were a multicultural family.
35. The Tribunal asked the sponsor why she was too scared to tell her parents about her marriage. She stated that she didn't know. The sponsor's father confirmed that he and his wife accepted the applicant as their son-in-law when they were told, after the event, about the marriage; that he provided support initially for the application for the visa; that he withdrew this support when he was contacted by a person claiming to be a relative of the applicant who told him the applicant already had a wife and family in India and was using the sponsor to get a visa; and that he reinstated his support when the applicant provided documentary evidence that convinced him that he only had one previous wife, who divorced him in 2013.
36. The Tribunal raised with the applicant the issue of his Facebook profile in 2016, where he presented himself as 'single' and 'living in Melbourne, Australia'. The applicant stated that he had that Facebook profile when he entered Australia and had not gotten around to updating it. The Tribunal pointed out that when he entered Australia in 2010, he was not single; indeed, he had entered on a student visa he was granted as the dependent of his first wife. The applicant then claimed that a friend set up his Facebook profile for him; that he didn't know why his friend profiled him as single; and that he didn't change his profile because he didn't know how to. The Tribunal notes that the applicant's Facebook entry in 2016 was accompanied by photos of him standing alone and posing for the camera.
37. In the written submission received on 20 August 2020, after the hearing, the representative advised that she was instructed to clarify the following: the applicant asked the sponsor to marry him on or around 22 February 2014; they married on 7 March 2014; the applicant gave the sponsor two rings, an engagement and a wedding ring, at the same time, but she didn't wear them because she didn't want her adoptive parents to see them; their 'engagement/wedding' was celebrated at a party held immediately after the 'court wedding'; and family and friends were 'in attendance'. The Tribunal accepts that the applicant's cousin and sister might have been 'in attendance' at the wedding but notes that the sponsor's family were not. The representative advised also that she was instructed that the applicant was living with his first wife, in Woolgoolga, in 2012; that he lived with his first wife until 21 February 2013; and that 'he was not exclusively in a relationship with more than one person at a time'.

38. The Tribunal did not find the applicant or the sponsor reliable witnesses. The Tribunal accepts that the sponsor likes the applicant and supports the visa application, but the enthusiastic nature of her support, to the extent of fabricating stories unsupported by the applicant, about dating, an engagement and a diamond engagement ring, did not enhance the credibility of the applicant's claims regarding the development of the relationship. Regardless of whether the sponsor has colluded in the contriving of the relationship, the Tribunal considers that the applicant was seeking a way to stay in Australia, and that he cultivated a relationship with the sponsor, and her son, over time, for this purpose.
39. The Tribunal acknowledges that the motivation to obtain a visa does not necessarily indicate that a relationship is not genuine. In this case, the Tribunal is not satisfied, having considered the parties' circumstances and the further evidence as discussed below, that the applicant was in a genuine relationship with the sponsor at the time of application.

Are the parties in a genuine spousal relationship?

40. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)–(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Financial aspects of the relationship

41. The parties confirmed at hearing that after six and a half years of marriage they have no joint ownership of significant assets; no joint liabilities; and no legal obligations owed to the other party other than those arising from the fact of their marriage. The applicant stated that he purchased a washing machine and a stove for the sponsor's house in Grafton and with the assistance of the sponsor's father, he purchased a car for the sponsor when her old car broke down. He confirmed that the car is registered under the sponsor's name but pointed out that his name was included in the insurance. He confirmed that he owns his own car, registered under his name. He advised that he uses his car to drive from his 'home' in Melbourne to the truck depot and from the truck depot back to his 'home' on his return. He advised that he lives in a rented flat in Melbourne, that he shares with another person.
42. Copies of statements of transactions from a joint account opened in 2016 were provided. When asked why the joint account was opened two years after the marriage, the applicant stated that he wasn't advised before then that a joint account was needed for the visa. He thought his 'court marriage' would suffice.
43. Statements of transactions from the joint account show that the sponsor's Centrelink payments, at the time of decision a carer's pension, and family allowance, are deposited into the account; that rent of \$240 and \$280 has been paid out of the account; and that a number of debited payments, including 'insurance', have been made from the account. A statement of transactions from the joint account from 26 April 2016 to 6 June 2016 shows that four salary payments of around \$600 to \$800 each were paid into the account, one in April and three in May. Subsequent statements however show that no salary was paid into the joint account. A statement from 23 December 2016 to 23 February 2017 shows the applicant transferred the following amounts, on the following days, from his bank account: 18 January

2017 \$200; 23 January 2017 \$200; 3 February 2017 \$200; 10 February 2017 \$200; 20 February \$200. Further statements provided, covering periods in 2019 and 2020, show that the applicant has transferred \$300 into the account, on a roughly but less-than-weekly basis. On one occasion, on 14 November 2019, the applicant transferred a larger amount, \$700. At hearing the applicant confirmed that the payments were to contribute to household costs, including rent, for the time he spent there.

44. The bank statements do not support the claim made by the applicant at the time of application that he was the 'breadwinner' for a family of three. The Tribunal asked the applicant at hearing why, if he was supporting the family financially, the sponsor received so much, so regularly, in the form of Centrelink benefits. The applicant stated that the sponsor received money for her son, and, at the time of this review, for caring for her mother. The representative claimed that the parties have contributed equally, financially, to the relationship, through the joint account. The statements provided do not support this claim; they show that considerably more has been received by the sponsor in benefits than has been transferred into the joint account by the applicant. The applicant stated that the sponsor 'had a card', but no evidence was provided regarding the nature of access the sponsor might have had to the applicant's bank account or accounts, or that she ever used the card.
45. Statements of transactions were provided from the applicant's personal bank account from 29 May 2020 to 2 August 2020. They show the applicant's truck driver's pay is deposited into this account. They show many more food and other purchases in towns and cities other than Grafton, than in Grafton. They show that the applicant has remitted significant amounts of money, several thousands of dollars at a time, to India. They show many transfers of significant amounts, thousands of dollars, into and out of the account. At hearing the representative stated that the transfers reflect the applicant's borrowing and lending activities through a 'money pool' arrangement within the local Indian community. No claim was made or evidence provided that the sponsor has had any involvement in the applicant's borrowing, lending, or other financial activities.
46. The Tribunal asked the applicant where he and the sponsor held the savings of AUD10,000 they claimed they had made towards a house deposit. The applicant stated that the savings were in his account, as could be seen from the statements provided, and that he kept the money in his account to prevent it from being spent. He advised that he had to pay AUD2,000 in migration agent fees. As at 2 August 2020 the applicant's bank account showed a balance of around AUD8,000. The Tribunal does not accept that the balance in the applicant's account is 'savings' intended for the purchase of the sponsor's house. The Tribunal considers that if the applicant genuinely intended to save money for this purpose, he could have transferred it for safekeeping to the sponsor's adoptive father, who is saving the rent paid on the house towards his adopted daughter's future purchase of the property.
47. The applicant and the sponsor's father claimed that the long-term plan is for the applicant and the sponsor to save and borrow money to enable them to purchase the house, or another house in joint names, in the future, after the applicant obtains permanent residency. No convincing evidence was provided that the applicant has, in over six years of marriage, contributed any money towards joint savings for a house purchase, and the Tribunal is not convinced that he has such intentions.
48. The Tribunal accepts that the applicant has shared day-to-day expenses with the sponsor when he has stayed in her house in Grafton on weekends, but finds the financial relationship between the parties, as revealed in the bank statements provided, to be more like that between a lodger and a landlord, than marriage partners.

49. The Tribunal finds that the applicant has not pooled his financial resources with the sponsor, and places significant weight on this aspect of the relationship.

Nature of the household

50. Evidence of cohabitation was provided in the form of utilities (AGL, ELGAS, Telstra) and insurance (NRMA) bills in joint names. Evidence was provided in the form of mail addressed to the applicant, that he has used the address of the sponsor's house in Grafton as his official address.
51. The representative in her written submission dated 3 August 2020, stated that the applicant was 'often' in Grafton over the weekends. She referred to a submission from the sponsor's sister, that the applicant proposed 'relocation of the family' so the sponsor and her son could live with the applicant in Melbourne. At hearing the parties appeared confused about this claim. It was clear, and they acknowledged, they had never seriously entertained the proposition. They claimed the sponsor could not leave Grafton because she had to care for her mother. The Tribunal was not convinced by this claim. The Tribunal accepts that the sponsor provides support for her adoptive mother but notes that her adoptive father is healthy and active and able to support his wife, albeit he is 'busy', and that the sponsor's adoptive mother has other children and avenues of support, including from local health services.
52. The applicant stated in a written submission dated 30 July 2020 that he enjoys being the sponsor's son's 'stepfather' and liked 'being called daddy'. He stated 'We enjoy playing TV games together and we enjoy jumping and stuff in the backyard. We sometimes ride bikes'. A one-sentence letter dated 28 July 2020 was provided from the principal of the sponsor's son's school, saying that the applicant had on occasion picked up the sponsor's son from outside the school. The sponsor advised at hearing that her son has had no contact with his biological father. The sponsor's son did not provide a written statement or oral testimony at hearing. The Tribunal accepts that the applicant gets on with the sponsor's son, and has on occasion picked him up from school, but notes that the applicant has stayed in the house where the sponsor lives with her son, mainly on weekends only. No evidence was provided that the sponsor has contributed significantly to the costs or provided other sorts of support for the sponsor's son's upbringing.
53. The sponsor confirmed at hearing that her house was fully furnished, and her rental/savings arrangement established with her adoptive father, when the applicant moved in. The Tribunal accepts the applicant's claim that he purchased a new stove and washing machine for the sponsor's house. The Tribunal also accepts the applicant's claims that he has cooked Indian meals, shared household chores and helped care for and entertain the sponsor's son, during his stopovers in Grafton.
54. The Tribunal does not consider the parties' separate living arrangements, for most of the days of the week during the six and a half years of their marriage, are satisfactorily explained by the sponsor's caring responsibilities. The Tribunal accepts that the applicant has helped to care for, and has engaged in activities with the sponsor's son, but does not accept the applicant's involvement during his weekend stopovers shows that he has shared responsibility jointly for the care and support of the sponsor's son.
55. The Tribunal finds that, to the extent that the applicant has shared a household with the sponsor, this has been on a part-time, mainly weekend basis, during the applicant's stopovers in Grafton. The Tribunal does not find the parties' financial or living arrangements show they have established a joint household commensurate with being in a genuine spousal relationship.

Social aspects of the relationship

56. The sponsor confirmed at hearing that she has never travelled to India with the applicant to meet his family. She stated that she sometimes joined in when the applicant talked with his parents but found it difficult to communicate with them over the phone because of the language barrier. The Tribunal accepts, from the affidavit provided by the applicant's father, that the applicant's parents in India know he has married and support the visa application.
57. A support letter of one sentence, dated 28 July 2020, was provided, as noted, by the principal of the South Grafton Public School. This letter stated that the applicant 'when required' picked up the sponsor's son from outside the school. The Tribunal accepts that the principal has given recognition to the parties as a couple, and that the applicant might have picked up the sponsor's son from outside the school on occasion. The Tribunal however gives limited weight to this letter, for the reasons that it lacked detail, and the principal appeared unaware that the applicant did not live in Grafton during the school week and would not have been available 'as required'.
58. As noted, support letters were provided, and retracted, and provided again, from the sponsor's adoptive parents. The Tribunal accepts that the applicant has participated in family activities with the sponsor's adoptive parents, and that at the time of decision the sponsor's adoptive parents, and the applicant's parents, support the visa application.
59. The Tribunal places little weight on the support letter dated 30 July 2020 from the sponsor's cousin for the reason, as discussed above, that the letter contained claims that appeared fabricated and conflicted with the applicant's. A letter dated 31 July 2020 was provided by Ms Suzanne Day, JP, who advised that she had observed the parties, when the applicant was 'home' on weekends, to be an 'incredibly happy family'; that the sponsor and her son missed the applicant when he wasn't there; and that the applicant was 'in constant contact via phone and video to chat to them both daily'.
60. Photos were provided of the parties together at social functions in 2012 and 2013. However, the Tribunal does not find that these photos demonstrate social recognition of the parties as an exclusive and committed couple, for the reasons that the applicant was married to his first wife until September 2013; he claimed he was not in a relationship with the sponsor until February 2014; and he claimed that before February 2014 he and the sponsor were 'just friends'.
61. The Tribunal asked the sponsor whether she told her adoptive siblings when she married. She said she did not. The Tribunal accepts on the evidence provided that at the time of decision immediate family members of the parties and friends and acquaintances in Grafton know them to be married and have seen them together and with the sponsor's son on weekends. The Tribunal accepts that the applicant and the sponsor have participated in social activities as a couple, in Grafton.
62. No evidence was provided that the sponsor has met the applicant's friends in Melbourne, or that she has even travelled to Melbourne to be with the applicant. The Tribunal is concerned, based on the applicant's Facebook profile in 2016, that the applicant appears not to have presented himself to friends and acquaintances in Melbourne as genuinely married and that the parties do not appear to have functioned socially or been recognised as a married couple beyond Grafton and their immediate family members.
63. While the Tribunal accepts that the parties have participated in social activities and been recognised as a couple in Grafton, this acceptance is outweighed by the Tribunal's concerns that the relationship has not been expressed socially, more widely.

Nature of persons' commitment to each other

64. The parties have been married for over six and a half years, but for the reasons that during this time they have lived in the same house in Grafton only on weekends; the applicant has not pooled his resources with the sponsor; and the Tribunal is not satisfied that he has established a joint household with the sponsor and her son other than on a part-time basis, the Tribunal does not find the duration of the marriage to weigh in favour of its genuineness.
65. The sponsor claimed that she has included the applicant in her will and that she is arranging for the applicant to be a guardian or custodian of her son but did not provide evidence of these arrangements. Evidence was provided that the applicant is listed as a contact person at the sponsor's son's school, and that the sponsor notified Centrelink about her marriage to the applicant. The Tribunal notes that such markers of a relationship are reasonably easy to reverse, and in this case, does not find them convincing proof that the parties are in a genuine relationship.
66. The parties claimed in written statements that they have communicated daily, over the phone and internet, when separated. The only evidence provided of such communication, however, was several video chats in February and March 2016 which seemed contrived: after two years of claimed married life, the parties addressed each as 'husband' and 'wife' and declared their love for each other, with little other content.
67. In her written statement dated 29 July 2020 provided to the Tribunal, the sponsor supposedly wrote:
- [the applicant] and I met at his cousin's place at his birthday party in 2012, we started dating shortly after. I was attracted by his personality and the commonality of our cultural heritage. He is good looking and was very kind to me, non-judgmental and supportive as I was a single parent.
68. In his written statement dated 30 July 2020, the applicant stated:
- Owing to the time restraint I have asked my Father-in-law to help me with this statement in English ... He has helped me before and has asked me question so that I can understand what is required.
- I met [the sponsor] at my cousin's birthday party. I was talking to her at the birthday party and it was very nice. After my divorce I decided to engage with [the sponsor] in more serious relationship. [The sponsor] is very nice and good woman whom I fell in love with and I also like her son.
69. The Tribunal notes that the sponsor's adoptive father advised the Tribunal that he has helped people other than the applicant to obtain visas to remain in Australia. As noted above, the Tribunal did not find the parties reliable witnesses.
70. The parties appeared affectionate and comfortable with each other at hearing. The Tribunal accepts that the sponsor likes the applicant and that the applicant, the sponsor and the sponsor's son, have provided each other with companionship and emotional support during the (mainly) weekends the applicant has stayed in the sponsor's house in Grafton. At hearing the sponsor's adoptive father stated, without providing any corroborative evidence, that the applicant has, in recent times, stayed in Grafton longer than his usual night or two on weekends, and the applicant claimed, also without providing any corroborative evidence, that he spent time when on leave from work, in Grafton. The Tribunal does not accept, because no evidence was provided, that the applicant has in recent times stayed longer than his usual night or two in Grafton, or that he has spent his time off work, in Grafton.

71. While accepting the parties have drawn companionship and emotional support from each other, the Tribunal considers that this has been within the context of a part-time relationship of convenience for the purpose of a migration outcome, rather than a genuine marriage. The Tribunal considers that the applicant does not see the relationship as long term and places significant weight on this consideration.
72. Having considered the circumstances of the parties, and the evidence, the Tribunal finds, against s.5F(2)(b)–(d), that the parties do not have a mutual commitment to shared life to the exclusion of others; that they are not in a genuine and continuing relationship; and that they do not live together or not separately and apart on a permanent basis.
73. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made or the time of this decision.
74. Therefore, the applicant does not meet cl.820.211(2)(a) or cl.820.221.
75. No claim was made or evidence before the Tribunal to indicate that the applicant meets the alternative criteria in cl.820.211(7), 820.211(8), 820.211(9), 820.221(2), 820.221(3) (death, family violence, child exceptions).
76. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

77. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Adrienne Millbank
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).